

OHIO BOARD OF TAX APPEALS

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| LOWE'S HOME CENTERS, LLC, |) | |
| (et. al.), |) | |
| Appellant(s), |) | CASE NO(S). 2018-598 |
| vs. |) | |
| |) | (REAL PROPERTY TAX) |
| WASHINGTON COUNTY BOARD |) | |
| OF REVISION, (et. al.), |) | DECISION AND ORDER |
| Appellee(s). |) | |

APPEARANCES:

For the Appellant(s) - LOWE'S HOME CENTERS, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - WASHINGTON COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, March 9, 2020

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Lowe's Home Centers, LLC ("Lowe's"), appeals from a decision of the Washington County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, the record of this board's hearing ("H.R."), and the parties' briefs. Lowe's pending motion to strike is denied.

The subject property is a 142,633-square-foot retail store built in 2002 and occupied by Lowe's on tax-lien date. The auditor valued the property at \$9,801,260 for tax year 2017. Lowe's filed a decrease complaint requesting a value of \$4,985,610. Lowe's waived its appearance at the BOR hearing, and the BOR issued a decision retaining the auditor's value.

When cases are appealed from a board of revision to this board, an appellant must prove

the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). At this board's hearing, Lowe's presented the appraisal report and testimony of Richard Racek, Jr., MAI, who opined a value of \$4,280,000 for the subject property as of January 1, 2017. The county appellees presented the appraisal report and testimony of Thomas Sprout, MAI, who opined a value of \$10,000,000 as of January 1, 2017. For reasons discussed below, we find Mr. Sprout's appraisal is more probative.

The appraisers differed in their fundamental views of how to appraise property in its "fee simple estate, as if unencumbered***," as required by R.C. 5713.03. This board recently discussed those opposing views in *Lowe's Home Centers, LLC v. Lorain Cty. Bd. of Revision* (Aug. 12, 2019), BTA No. 2017-1023, unreported. In that opinion we explained each appraiser's views as such:

Mr. Racek appraised the property under the theory that "fee simple unencumbered" requires that a property be vacant on tax lien date, and assumes a hypothetical sale of the property without a tenant in place. Such a sale allows the buyer of a property in the hypothetical sale to acquire the complete "bundle of rights" associated with ownership of real property. Mr. Racek therefore used sales of only vacant properties in his sales comparison approach. Mr. Sprout, on the other hand, appraised the property as if it could be purchased with a lease in place at market terms. Rather than a purchaser acquiring a possessory interest in the property, the purchaser could exchange such right for the income generated from leasing the property. Mr. Sprout therefore utilized some sale comparables sold with leases in

place, and adjusted those leases to account for any non-market terms. It is these divergent theories of valuation that guide the appraisers' approaches to valuing this property and the parties' arguments.

Id. at 2-3. Lowe's argues in this case—as it did in *Lowe's Home Centers, LLC*, BTA No. 2017-1023—that R.C. 5713.03 requires us to value property as if vacant on tax-lien date. We have rejected that argument in several cases. This board specifically held in *Lowe's Home Centers, LLC*, BTA No. 2017-1023 the following:

We first address Lowe's argument that R.C. 5713.03 requires that we accept its view that real property in Ohio must be valued as if it were vacant on tax lien date. This board confronted a similar argument in *Lowe's Home Centers LLC v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported, appeal pending, 10th Dist. No. 19AP179. We rejected the argument, citing to the Supreme Court's recent decision in *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370, where it found no error in an appraiser valuing an owner-occupied property as it were generating market rate income under a hypothetical lease. "Appraising property in this way is consistent with R.C. 5713.03's directive to determine 'the true value of the fee simple estate as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market." Id. at ¶27. Here, we likewise reject Lowe's argument that R.C. 5713.03 requires that the subject real property be valued as if it were vacant on tax lien date.

Id. at 3. We see no compelling reason to revisit our prior decisions on the issue and reject

Lowe's interpretation of "unencumbered" for purposes of real property tax valuation.

We now turn to the appraisals. Mr. Sprout developed his appraisal using the sales comparison and income capitalization approaches. For his sales comparison approach, Mr. Sprout selected similar big-box store sales ranging from \$36.38/SF to 104.52/SF. The sales occurred between December 2013 to December 2017. The buildings on each parcel were built between 1962 and 1996. For his income approach, Mr. Sprout utilized ten properties leased for between \$3.00 and \$6.55/SF. His indicated income capitalization value was \$10,050,000. He reconciled the two approaches, giving each equal weight, and came to a final conclusion of value of \$10,000,000.

Mr. Racek also utilized the sales comparison and income capitalization approaches. For his sales comparison approach, he selected nine sales, ranging from \$11.46/SF to \$36.38/SF. He adjusted the comparables for various reasons, including size, location, and age. His indicated sales comparison value was \$4,280,000. For his income capitalization approach, he selected thirteen leases, which range from \$1.00/SF to \$5.50/SF. He estimated the subject could achieve a net operating income amount of \$388,710, which he capitalized at 9%. He reconciled the two values, and his final opinion of value was \$4,280,000.

We turn now to the briefs. Lowe's brief focuses on its reading of R.C. 5713.03. Mr. Sprout's appraisal is fundamentally flawed, according to Lowe's, because he chose occupied properties as comparables. Accordingly, Lowe's argues, Mr. Racek's appraisal should be adopted because he intentionally chose vacant properties, which comports with Lowe's reading of R.C. 5713.03. As noted above, this board has rejected that argument, and no court has reversed our reading of the statute. Accordingly, we again reject Lowe's argument. As a consequence, we find Mr. Racek's appraisal uses the incorrect legal standard, which caused him

to select vacant comparables and intentionally disregard potential comparables that were occupied. We likewise find Mr. Sprout's comparables are more comparable to the subject than Mr. Racek's comparables. For example, Mr. Sprout's comparables are generally closer geographically to the subject. Mr. Sprout's rent comparables are also closer in age. We find nothing wrong with Mr. Sprout's highest and best use determination and do not find it violates R.C. 5713.03 simply because it assumes the property was occupied.

Lowe's makes two additional arguments against Mr. Sprout's appraisal, but we respectfully disagree with those arguments. First, Lowe's argues Mr. Sprout developed a value in use appraisal based on his highest and best use. Mr. Sprout's highest and best use as improved was for the existing improvements to be "occupied by a national retailer." We do not find Mr. Sprout conducted a value in use appraisal simply because he recognized the current use of the property. In *Johnston Coca-Cola Bottling Co. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870 ("*Johnston*"), the Ohio Supreme Court clarified that "[a]lthough present use cannot be the *only* measure of value, in a proper case it may be considered in determining true value for tax purposes." Id. at ¶ 14; see also *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision*, 12 Ohio St.3d 270, 271 (1984) (Ohio law "does not prohibit altogether any consideration of the present use of a property"). The takeaway from *Johnston* is present use can be considered but not "to the exclusion of other factors relevant to exchange value." Id. at ¶ 15. This board need not pretend property was not used as it was on tax-lien date, nor must it disregard that fact when determining which comparables are "more analogous" to the subject. Id. In comparing the comparables utilized between the two appraisers, use by a national tenant is a higher and better use than a vacant property. We also note Mr. Sprout's comparables are generally more analogous to the subject both in age and size.

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Second, Lowe's argues Mr. Sprout did not properly adjust for property rights conveyed. The county argues Mr. Sprout made the same types of adjustments he made in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 268, 2018-Ohio-4282 ("Hilliard Station"), which the Ohio Supreme Court said comported with *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836, and its progeny. The *Hilliard Station* court held Mr. Sprout met his responsibility by adjusting leased fee sales by taking into account the lease terms and rates. He did likewise in this case, and his report explicitly states such. H.R., Ex. A at 36. We note that determination is consistent with our recent decision involving the same property. See *Lowe's Home Centers, Inc. v. Washington Cty. Bd. of Revision* (Sept. 10, 2019), BTA No. 2014-4606, unreported, appeal pending, 4th Dist. Washington No. 2019CA000022.

For these reasons, we find Mr. Sprout's appraisal is the best evidence of value and order the property valued per that appraisal for tax year 2017, as follows:

PARCEL NUMBER 24-0084566.001

TRUE VALUE

\$9,210,180

TAXABLE VALUE

\$3,223,560

PARCEL NUMBER 24-0084566.004

TRUE VALUE

\$4,160

TAXABLE VALUE

\$1,460

PARCEL NUMBER 23-0084565.001

TRUE VALUE

\$150,510

TAXABLE VALUE

\$52,680

PARCEL NUMBER 24-0084563.001

TRUE VALUE

\$527,690

TAXABLE VALUE

\$184,690




PARCEL NUMBER 24-0084570.002

TRUE VALUE

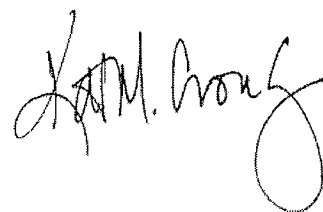
\$107,460

TAXABLE VALUE

\$37,610

| BOARD OF TAX APPEALS | | |
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| | | |
| RESULT OF VOTE | YES | NO |
| Mr. Harbarger |  | |
| Ms. Clements |  | |
| Mr. Caswell |  | |

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary